
**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE
APPLICATION OF LTD BROADBAND
LLC FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS
CARRIER FOR PURPOSES OF
RECEIVING FEDERAL UNIVERSAL
SERVICE SUPPORT

SDTA Motion and Brief in Support:

**Use of Information Marked as
Confidential**

Docket No. TC21-001

The South Dakota Telecommunications Association (SDTA) hereby moves the Commission to determine how information marked by LTD as “Confidential” or “Attorney’s Eyes Only - Confidential” should be handled at the scheduled December 1 and 2, 2021 hearing in the above captioned matter. Specifically, SDTA requests that SDTA’s filed testimony, Expert Report (Exhibit LT-D2) and associated exhibits (LT-E2 and LT-E3), be made public if introduced and accepted as hearing exhibits. SDTA further requests that examination of SDTA’s witness be conducted in an open, public forum and that no testimony be kept from the public.

BACKGROUND

On or about August 12, 2021, the parties entered into a Stipulation for the entry of a Protective Order for Confidentiality. The Stipulation was entered to facilitate the discovery process. On August 26, 2021, the Commission entered an Order incorporating the terms of the Stipulation (herein “Order”). The Stipulation and Order control how the parties must handle and protect information marked as “Confidential” or “Attorney’s Eyes Only – Confidential.”

A hearing in this docket is scheduled for December 1 and 2, 2021. Neither the Parties' stipulation nor the Order addresses the use of confidential-marked information at trial/hearing. Rather, the Parties agreed, "*Issues concerning the use of information governed by this Order at trial or in hearings are reserved for the Commission's later decision.*" Protective Order for Confidentiality, Page 2 paragraph 2(e). SDTA now requests the Commission, pursuant to ARSD 20:10:01:42 determine how information marked as "Confidential" or "Attorney's Eyes Only – Confidential" should be handled at the upcoming hearing.

If LTD requests for SDTA's pre-filed direct testimony, expert report, report exhibits, and any live testimony that results, to be confidential, then it is LTD's burden "of proving by a preponderance of the evidence that the information qualifies as confidential information by showing that disclosure would result in material damage to its financial or competitive position, reveal a trade secret, or impair the public interest." ARSD 20:10:01:42.

INFORMATION AND/OR DOCUMENTS MARKED CONFIDENTIAL

LTD produced its long form during discovery. LTD marked all pages of its long form as "confidential." The long form was filed by SDTA with direct testimony and labeled LT-D3. SDTA's expert witness used data and information from LTD's long form when analyzing whether LTD meets Eligible Telecommunication Carrier requirements. SDTA redacted its filed direct testimony, expert report and report exhibits when the documents relied upon or referred to LTD's long form. However, much of the information contained in the long form is publicly available through other sources and otherwise does not meet the burden of confidentiality as defined in South Dakota law. SDTA now seeks to make its filed testimony, related documents, and any resulting live testimony, public for purposes of the December 1 and 2, 2021 hearing.

In the chart below, SDTA identifies the long form page which is the source of information, provides a description of the information contained on the page, and lists the corresponding redacted page of SDTA direct testimony or expert report/exhibits that relied upon that confidential-marked data. To be clear, it is the SDTA testimony, report and report exhibits that SDTA seeks to make public, not the long form pages themselves.

<u>EXHIBIT LT-D3 – Long Form: Page # Attached with page numbers</u>	<u>Description of the data/information</u>	<u>SDTA Direct Testimony and Expert Report Page.</u>
3 and 14: chart listing assumptions LTD made when developing its business plan.	The construction cost formula and subscription rate	Testimony: 8, 9 LT-D2 Report: 7, 8, 9, 11, 12, 13, 14, 15 Exhibit LT-E2 Exhibit LT-E3
3 and 14: summary chart	LTD total construction cost, RDOF support, customer revenue and total cap provided by funding partner.	Testimony: 9 LT-D2 Report: 9, 13, 14, 15 Exhibit LT-E2 Exhibit LT-E3
6: LTD’s South Dakota shortfall/surplus calculations	Business plan for 6 years	Testimony: 10, 11, 12 LT-D2 Report: 7, 8, 9, 10, 11, 12, 13, 14, 15 Exhibit LT-E2 Exhibit LT-E3
21 – 34	Network Architecture	LT-D2 Report: 6, 7
37	Internet Connection Point for SD	LT-D2 Report: 8
70 – 82, 98 - 110	Network Design	Testimony: 6 LT-D2 Report: 4, 5
95	SD buildout plan	LT-D2 Report: 7

CONCLUSION

SDTA respects the Commission's commitment to transparency and its legal obligation to conduct open public proceedings. SDTA also appreciates LTD's desire to protect confidential information. This Motion is intended to give the Commission and the parties an opportunity to establish the parameters of confidentiality prior to the scheduled hearing.

SDTA argues that nothing contained in its written prefiled testimony, the SDTA expert report or report exhibits is confidential and that live hearing testimony regarding the same should be open to the public. SDTA further argues that if LTD requests the information be kept confidential, that it is LTD's burden to establish that disclosure of the information would result in material damage to its financial or competitive position, reveal a trade secret or impair the public interest.

The parties are scheduled to meet on November 18, 2021, to discuss the upcoming hearing. SDTA expects that the parties will discuss this issue and is hopeful that we can resolve it. Commission action is requested only if the parties are unable to resolve the issue informally.

DATED this 5 day of November, 2021.

/s/ Kara Semmler

Kara Semmler
General Counsel
South Dakota Telecommunications Assn.
320 East Capitol Ave.
P.O. Box 57
Pierre, SD 57501